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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

H. STUART CUNNINGHAM
At _____ o'clock
CLERK

THE MAGNAVOX COMPANY, et al.,

Plaintiffs,

v.

BALLY MANUFACTURING CORPORATION, et al.,

Defendants.

)
) CONSOLIDATED CIVIL
) ACTION NOS.
) 74 C 1030
) 74 C 2510
) 75 C 3153
) 75 C 3933
)
)

DEFENDANTS' BALLY, MIDWAY AND EMPIRE
MOTION PURSUANT TO RULE 37 F.R.C.P.
TO COMPEL PLAINTIFFS TO PRODUCE DOCU-
MENTS FOR DEFENDANTS' INSPECTION AND
TO COMPEL TESTIMONY

Pursuant to Rule 37 F.R.C.P., Defendants Bally, Midway and Empire move this Court for an order compelling Plaintiffs to produce for Defendants' inspection and copying documents which Plaintiffs have refused to produce on the grounds of attorney-client privilege or attorney work product privilege and compelling Plaintiffs' witnesses to answer questions with respect to conversations between Magnavox and Sanders.

Defendants by interrogatories and requests for production of documents have requested Plaintiffs to identify and produce relevant documents. In response to these interrogatories and production requests, Plaintiffs have refused to produce over 200 identified documents on the grounds of

attorney-client and/or attorney work product privilege.

A list of the identified documents is attached as Appendix A.

Defendants believe that most of the documents or conversations are not subject to any privilege. Since Defendants have not seen the documents, the burden of proving the documents or conversations are within the attorney-client privilege is on Plaintiff, Duplan Corp. v. Deering Milliken, Inc., 397 F.Supp. 1146, 1161 (D.S.C.1974).

Documents 2-1 through 2-35 relate to licensing negotiations between Sanders and Magnavox with respect to the patents in suit and attempts by Magnavox to sub-license the patents. Most of these documents were either written by T.A. Briody, who was the principle negotiator for Magnavox. While Mr. Briody happens to be a lawyer, he was not acting as a lawyer during these negotiations, but as a business man. Magnavox should not be permitted to hide its activities behind the clothe of the attorney-client privilege by selecting an attorney to do its negotiations. Radio Corporation of America v. Rauland Corp., 18 F.R.D. 440, 443 (N.D.Ill.1955).

Documents 3-1 through 3-18 relate to communications between the owner of the patents in suit, i.e., Sanders, and its exclusive licensee, Magnavox, mostly dated long prior to the filing of the Complaint in the instant action. Clearly communication between Sanders and Magnavox with respect to licensing should not be subject to the attorney-client or work product privilege.

Documents 18-1 through 18-13 relate to prior art cited during the prosecution of the patents in suit. Most of the documents are dated a long time prior to filing of the instant lawsuit, and therefore, should not be subject to the attorney work product privilege. In addition, comments concerning prior art cited by the Patent Office during the prosecution of the application should not be privileged. Some of the documents were communications between Sanders and Magnavox which clearly are business documents not subject to any privilege.

Documents 25-1 to 25-29 relate to preparation, filing and prosecution of the reissue applications which issued as the patents in suit. Most, if not all the documents relate to business communications between Sanders and Magnavox discussing how to obtain more valuable patent protection. Clearly communications between Magnavox and Sanders with respect to actions to be taken by Sanders during the prosecution of the reissue applications should not be subject to the attorney-client privilege. Such communications are between two separate companies, between a licensor and a licensee, and are for the purpose of enhancing the business position of the conspirators with respect to competitors. If such communications were subject to the attorney-client privilege, all communications between conspirators would be privileged.

Another group of documents which Plaintiffs have refused to produce on the grounds of attorney-client privilege are documents 29-1 through 29-52 which were sent to the foreign associate of Sanders and deal with the prosecution of the foreign counterparts of the patents in suit. The foreign associates are not attorneys, but are agents, and therefore, any correspondence between the Plaintiff Sanders and the foreign agents should not be subject to the attorney-client privilege.

Documents 45-1 through 45-42 are miscellaneous documents which come within one or more of the above-discussed categories. These documents likewise should not be subject to any privilege.


In addition, during depositions Plaintiffs' attorneys have instructed Plaintiffs employees not to answer questions relating to conversations between Magnavox and Sanders with respect to the filing and prosecution of the applications which issued as the patents in suit and with respect to licensing activities. These conversations are business conversations not legal advice and should not be subject to the attorney-client privilege.

It is respectfully requested that the Plaintiffs be ordered to either produce the documents listed in the attached Appendix or, by April 16th, to submit them to the court for the Court's review to determine whether or not the privilege exists. Also, it is requested that the Plaintiffs' witnesses

be ordered to testify as to communications between Magnavox and Sanders with respect to licensing activities and with respect to the filing and prosecution of applications for the patents in suit.

Respectfully submitted,

Dated: April 13, 1976


John F. Flannery
One of the attorneys for
Defendants, Bally Manufacturing
Corp., Midway Mfg. Co., and
Empire Distributing, Inc.

Fitch, Even, Tabin & Luedeka
135 South LaSalle Street
Chicago, Illinois 60603

List of Documents and Things

All documents and things constituting or referring or relating to:

REQUEST (2) The licensing or sale by the inventor(s) or either plaintiff of rights in the alleged inventions of said patents and/or negotiations relating thereto.

RESPONSE 2

Plaintiffs object to this paragraph of the request insofar as it requests documents for which a proper claim of attorney-client privilege or attorney's work product may be made. Plaintiffs have previously produced for defendants certain documents wherein a valid claim of attorney-client privilege or attorney's work product existed as to a portion of those documents. With respect to those documents, copies thereof were produced with the privileged or work product portions thereof removed. The following documents will not be produced in their entirety:

- 2 - 1. Memo, 6-11-74, T.A. Briody to S.J. Rozel.
- 2 - 2. Letter, 8-9-74, T.A. Briody to T.W. Anderson and D.D. Allegretti.
- 2 - 3. Draft letter, undated, by T.A. Briody.
- 2 - 4. Handwritten notes, undated, by T.A. Briody.
- 2 - 5. Letter, 1-22-74, T.A. Briody to T.W. Anderson.
- 2 - 6. Handwritten notes, 4-4-73, by T.A. Briody.
- 2 - 7. Handwritten notes (2), undated, by T.A. Briody.
- 2 - 8. Handwritten notes (2), 3-20-73, by T.A. Briody.

- 2-9. Handwritten notes, undated, by T.A. Briody.
- 2-10. Letter, 2-28-74, T.A. Briody to M.W. Deitch.
- 2-11. Letter, 8-8-74, T.W. Anderson to T.A. Briody.
- 2-12. Memo, 7-19-74, T.A. Briody to file.
- 2-13. Handwritten notes, 5-29-74, by T.A. Briody.
- 2-14. Handwritten notes, undated, by T.A. Briody.
- 2-15. Letter, 3-19-74, T.A. Briody to T.W. Anderson.
- 2-16. Letter, 3-11-74, T.W. Anderson to T.A. Briody.
- 2-17. Memo, 3-8-74, by T.A. Briody.
- 2-18. Memo, 3-7-74, by T.A. Briody.
- 2-19. Memo, 1-7-71, G.G. Martin to R.T. Seeger.
- 2-20. Handwritten notes, 2-26-71, R.T. Seeger.
- 2-21. Handwritten notes, 2-18-71, R.T. Seeger.
- 2-22. Letter, 8-23-74, T.A. Briody to T.W. Anderson.
- 2-23. Letter, 3-28-74, T.A. Briody to D.D. Allegretti.
- 2-24. Memo, 12-6-73, T.A. Briody to R.E. Wiles.
- 2-25. Memo, 2-9-71, by L. Etlinger.
- 2-26. Memo, 11-2-71, R.I. Seligman to L. Etlinger.
- 2-27. Letter, 2-20-75, T.A. Briody to L. Etlinger.
- 2-28. Letter, 2-12-75, T.A. Briody to R.T. Seeger.
- 2-29. Letter, 8-23-74, T.A. Briody to T.W. Anderson.
- 2-30. Letter, 3-7-74, T.A. Briody to T.W. Anderson.
- 2-31. Letter, 3-11-74, T.W. Anderson to T.A. Briody.
- 2-32. Letter, 3-19-74, T.A. Briody to T.W. Anderson.
- 2-33. Letter, 8-8-74, T.W. Anderson to T.A. Briody.
- 2-34. Letter, 8-23-74, T.A. Briody to T.W. Anderson.
- 2-35. Letter, 3-20-74, R.A. Cesari to L. Etlinger.

REQUEST (3) Communications between plaintiff Magnavox and plaintiff Sanders relating to:

(a) Any business arrangement or agreement between them involving the alleged inventions or subject matter of said patents.

(b) Sublicensing of any other party under said patents or the applications therefor.

(c) Licensing or sublicensing under any foreign patent or foreign patent application corresponding to said patents.

(d) Royalty or other payment made or collected in connection with or under said patents or any license relating thereto.

(e) The strengths and/or weaknesses of said patents.

(f) Infringement of said patents, or the possibility thereof, by any party.

(g) Misuse of said patents, or the possibility thereof, by either plaintiff.

(h) Antitrust violations, or the possibility thereof, by either plaintiff in the licensing or enforcement of said patents.

RESPONSE 3

Plaintiffs object to this paragraph of the request insofar as it requests documents for which a proper claim of attorney-client privilege or attorney's work product may be made. Plaintiffs have previously produced for defendants certain documents wherein a valid claim of attorney-client privilege or attorney's

work product existed as to a portion of those documents. With respect to those documents, copies thereof were produced with the privileged or work product portions thereof removed. The following documents will not be produced in their entirety:

- 3 - 1. Memo, 1-6-72, R.T. Seeger to G.G. Martin.
- 3 - 2. Memo, 9-27-71, R.T. Seeger to G.G. Martin.
- 3 - 3. Memos (2), undated, G.G. Martin.
- 3 - 4. Memo, 1-7-71, G.G. Martin to R.T. Seeger.
- 3 - 5. Handwritten notes, 10-3-72, by R.T. Seeger.
- 3 - 6. Memo, 9-26-72, T.A. Briody to file.
- 3 - 7. Notes, 9-26-72, by T.A. Briody.
- 3 - 8. Handwritten notes, 8-3-72, by R.T. Seeger.
- 3 - 9. Handwritten notes, 7-8-72, by R.T. Seeger.
- 3 - 10. Handwritten notes, 7-24-72, by R.T. Seeger.
- 3 - 11. Draft letter, 11-4-71, by L. Etlinger.
- 3 - 12. Draft letter, undated, by L. Etlinger.
- 3 - 13. Draft letter, 12-16-71, by L. Etlinger.
- 3 - 14. Draft letter, 12-17-71, by L. Etlinger.
- 3 - 15. Letter, 4-28-72, L. Etlinger to R.T. Seeger.
- 3 - 16. Letter, 11-7-72, L. Etlinger to T.A. Briody.
- 3 - 17. Agreement, draft, 11-20-72.
- 3 - 18. Letter, 3-4-75, L. Etlinger to T.A. Briody.

REQUEST (4) The investigation by Magnavox and/or Sanders of possible infringement of said patents and/or the examination of any video games in connection with such investigation.

SPONSE (4) Plaintiffs will permit inspection and copying of the documents requested in this paragraph which have not previously been produced for defendant Midway except for the following which is subject to a valid claim of attorney-client privilege and attorney's work product:

4-1. Memo, 11-8-73, R.T. Seeger to T.A. Briody.

REQUEST (9) Communications to any of the following persons relating to this action or to said patents:

- (a) Mr. Dimitri Allegretti
Molinare, Allegretti, Newitt
& Witcoff
1400 LaSalle Bank Building
135 South LaSalle Street
Chicago, Illinois 60603
- (b) Mr. Richard C. Martin
Brookes & Martin
1 Boyne Park, Tunbridge Wells
Kent TN4 8EL
England
- (c) Alca Electronics, Ltd.
Alca House
Goddard Street
Oldham OL 8 1LQ
Lancashire
England
- (d) Coughtrey's Automatic Supplies
Limited
Auto House, Derby Road
Triumph Road, Lenton
Nottingham
England
- (e) London Coin Machines, Ltd.
22-24 Bromells Road
London SW4 OBQ
England
- (f) Associated Leisure Sales, Ltd.
Phonographic House
The Vale
London NW118SU
England

(g) Coin Concession Ltd.
213 Longley Road
London SW17
England

(h) Atari (U.K.) Ltd.
29A Draycott Road
Breaston, Derbyshire
England

RESPONSE (9)

Plaintiffs object to

subparagraph (a) of this paragraph as requesting documents for which a proper claim of attorney-client privilege may be made. The documents requested in subparagraph (a) of this paragraph are subject to a valid claim of attorney-client privilege and will not be produced; they are identified as follows:

- 9 - 1. Letter, 4-15-74, J.T. Williams to D.D. Allegetti.
- 9 - 2. Letter, 6-26-74, J.T. Williams to D.D. Allegetti.

REQUEST (17) The documents identified in plaintiffs' response to Interrogatory 62 of defendant CDI.

INTERROGATORY 61. Have plaintiffs ever prepared, transmitted, or received or were there ever prepared, transmitted, or received on their behalf, any documents such as letters, memoranda, reports or opinions relevant to the question of the validity of Patent 3,659,284?

RESPONSE:

Yes.

INTERROGATORY 62. If the answer to Interrogatory 61 is "Yes," for each such document separately state:

- (a) its date;
- (b) the name and address and business of the individual, firm, or corporation who prepared it;
- (c) whether plaintiffs will contend that the document is privileged;
- (d) the opinion expressed if plaintiffs admit that the document is not privileged;
- (e) the name and address of the person who has possession or custody of each copy thereof.

RESPONSE TO C.D. C.

17-C

- (a) August 3, 1972
- (b) Jeffers & Rickert
610 Indiana Bank Building
Fort Wayne, Indiana 46802
- (c) Yes
- (d) No response required
- (e) Thomas A. Briody
The Magnavox Company
1700 Magnavox Way
Fort Wayne, Indiana 46804

17-E

- (a) August 10, 1972
- (b) Jeffers & Rickert
610 Indiana Bank Building
Fort Wayne, Indiana 46802
- (c) Yes
- (d) No response required
- (e) Thomas A. Briody
The Magnavox Company
1700 Magnavox Way
Fort Wayne, Indiana 46804

RESPONSE (17)

Plaintiffs object to this paragraph insofar as it requests production of documents C and E identified in plaintiffs' response to interrogatory 62 of defendant CDI as requesting documents for which a proper claim of attorney-client privilege may be made.

REQUEST (18) All prior art cited during the prosecution and examination of said patents and of all corresponding foreign patents and patent applications.

RESPONSE 18

art. Plaintiffs further object to this paragraph insofar as it requests documents for which a proper claim of attorney-client privilege or attorney's work product may be made. Some of those documents are identified in plaintiffs' response to interrogatory 62 of defendant CDI. Additionally, the following documents will not be produced in response to this paragraph:

- 18- 1. Memo, 9-27-71, R.T. Seeger to file.
- 18- 2. Memo, 9-27-71, R.T. Seeger to G.G. Martin.
- 18- 3. Handwritten notes, undated, by R.T. Seeger.
- 18- 4. Handwritten notes (2), 9-21-71, by R.T. Seeger.
- 18- 5. Notes, undated, by R.M. Rickert.
- 18- 6. Letter, 9-13-74, T.A. Briody to J.T. Williams.
- 18- 7. Letter, 9-3-74, R.I. Seligman to T.A. Briody.
- 18- 8. Letter, 7-31-72, F.C. Maley to R.T. Seeger.
- 18- 9. Handwritten notes, 9-21-69, by R. Rickert.
- 18- 10. Letter, 12-9-66, A.M. Lowe to L. Etlinger.
- 18- 11. Letter, 8-9-67, A.M. Lowe to L. Etlinger.

18-12. Handwritten notes, 9-18-74, by J.T. Williams.

18-13. Handwritten notes, 9-19-74, by J.T. Williams.

REQUEST (25) The preparation, filing and prosecution of the application for reissue of Patent 3,659,285 and any other reissue applications relating to said patents.

RESPONSE (25) Plaintiffs object to this request insofar as it requests documents for which a proper claim of attorney-client privilege or attorney's work product may be made. The following documents will not be produced in response to this paragraph:

- 25-1. Letter, 4-16-74, J.T. Williams to L. Etlinger.
- 25-2. Letter, 4-23-74, L. Etlinger to T.A. Briody.
- 25-3. Letter, 9-5-74, R.I. Seligman to J.T. Williams.
- 25-4. Letter, 9-12-74, R.I. Seligman to J.T. Williams.
- 25-5. Letter, 10-15-74, R.I. Seligman to J.T. Williams.
- 25-6. Letter, 10-18-74, R.I. Seligman to T.A. Briody.
- 25-7. Letter, 1-22-75, R.I. Seligman to J.T. Williams.
- 25-8. Letter, 2-4-75, R.I. Seligman to J.T. Williams.
- 25-9. Letter, 1-24-75, J.T. Williams to R.I. Seligman.
- 25-10. Letter, 1-24-75, L. Etlinger to M. O'Connell.
- 25-11. Letter, 1-21-75, R.I. Seligman to J.T. Williams.
- 25-12. Letter, 1-15-75, R.I. Seligman to J.T. Williams.
- 25-13. Draft application, undated, by R.I. Seligman.
- 25-14. Draft amendment, undated, by R.I. Seligman.
- 25-15. Letter, 1-27-75, J.T. Williams to R.I. Seligman.

- 25-16. Draft application, undated, by R.I. Seligman.
- 25-17. Letter, 10-14-74, J.T. Williams to R.I. Seligman.
- 25-18. Handwritten notes, 1-27-75, by J.T. Williams.
- 25-19. Handwritten notes, undated, by J.T. Williams.
- 25-20. Memorandum, 4-15-74, T.W. Anderson to J.T. Williams.
- 25-21. Letter, 1-27-75, J.T. Williams to T.A. Briody.
- 25-22. Letter, 1-24-75, J.T. Williams to T.A. Briody.
- 25-23. Letter, 9-6-74, J.T. Williams to R.I. Seligman.
- 25-24. Handwritten notes, 1-20-75, by J.T. Williams.
- 25-25. Handwritten notes, undated, by J.T. Williams.
- 25-26. Handwritten notes, undated, by J.T. Williams.
- 25-27. Draft claims, undated, by J.T. Williams.
- 25-28. Handwritten notes, undated, by T.W. Anderson.
- 25-29. Memorandum, 8-4-75, T.W. Anderson to J.T. Williams.

REQUEST (29) All documents and things requested to be identified in "Defendant Midway's First Set of Interrogatories To Plaintiff Sanders Associates, Inc. (Nos. 1 through 81)" and "Defendant Midway's First Set of Interrogatories To Plaintiff The Magnavox Company (Nos. 1 through 81)" and either identified or offered to be produced in plaintiffs' original and supplemental responses to such interrogatories, including Interrogatories Nos. 4, 5, 6, 7, 8, 9, 10, 11, 12a, b, c, d, e, 20, 22, 23, 42, 49, 56, 75, 76, 77, 78, 79, 80 and 81.

RESPONSE 29

With respect to Midway's interrogatory 7, the following documents will not be produced for inspection as being the subject of a proper claim of attorney-client privilege:

- 29- 1.A Letter, 3-4-71, L. Etlinger to R.A. Cesari.
- 29- 2.A Letter, 7-25-72, L. Etlinger to R.T. Seeger
(A copy of this letter with portions thereof
deleted has previously been produced for defendant.)
- 29- 3.A Letter, 4-17-73, R.I. Seligman to T.A. Briody.

With respect to Midway's interrogatory 12,
no documents will be produced in response to paragraph
(e) thereof for the reasons stated in plaintiffs'
response to subparagraph (3)(c) of Midway's request
for production. Further, with respect to Midway's
interrogatory 12, the following documents will not
be produced for inspection as being subject to proper
claims of attorney-client privilege or attorney's work
product:

- 29- 1. Telex, 12-4-75, L. Etlinger to L.A. Groth & Co.
- 29- 2. Letter, 9-10-74, R.I. Seligman to L.A. Groth & Co.
- 29- 3. Letter, 7-4-74, L.A. Groth & Co. to R.I. Seligman.
- 29- 4. Letter, 12-21-72, L.A. Groth & Co. to Sanders Associates.
- 29- 5. Letter, 6-5-74, R.I. Seligman to T.A. Briody.
- 29- 6. Letter, 6-20-75, A. Plaiser to L. Etlinger.
- 29- 7. Letter, 5-27-75, R.I. Seligman to Nederlandsch
Octrooibureau.
- 29- 8. Letter, 5-9-75, A. Plaiser to L. Etlinger.
- 29- 9. Letter, 5-1-75, A. Plaiser to L. Etlinger.
- 29- 10. Letter, 4-16-75, A. Plaiser to Nederlandsch Octrooibureau.
- 29- 11. Letter, 7-8-74, V.H. Rootsey to L. Etlinger.
- 29- 12. Letter, 7-12-74, F. de Kemmeter to Sanders Associates.
- 29- 13. Letter, 7-4-74, Dipl.-Ing. Klaus Behn to L. Etlinger.

- 29- 14. Letter, 7-7-74, Dr. Erich I. Rapaport to Sanders Associates.
- 29- 15. Letter, 1-7-75, Racheli & Fiammenghi to L. Etlinger.
- 29- 16. Letter, 12-13-74, R.I. Seligman to T.A. Briody.
- 29- 17. Letter, 12-13-74, L. Etlinger to Ing. A. Racheli.
- 29- 18. Letter, 7-18-74, Ing. A. Racheli to R.I. Seligman.
- 29- 19. Handwritten notes, undated, by R.I. Seligman.
- 29- 20. Letter, 7-4-74, L.A. Grøth & Co. to R.I. Seligman.
- 29- 21. Letter, 7-16-74, Ing. A. Racheli to R.I. Seligman.
- 29- 22. Letter, 9-20-74, John A. Sakellarides to Sanders Associates.
- 29- 23. Letter, Dr. Aris Kalliklis to L. Etlinger.
- 29- 24. Letter, 4-17-73, T.A. Briody to R.I. Seligman.
- 29- 25. Letter, 11-11-74, Sres. Elzaburu to R.I. Seligman.
- 29- 26. Notice, 10-23-74, Sres. Elzaburu to L. Etlinger.
- 29- 27. Letter, 10-15-74, R.I. Seligman to Sres. Elzaburu.
- 29- 28. Letter, 10-8-74, Sres. Elzaburu to R.I. Seligman.
- 29- 29. Response, 10-1-74, Sres. Elzaburu to L. Etlinger..
- 29- 30. Letter, 9-6-74, R.I. Seligman to Sres. Elzaburu.
- 29- 31. Letter, 7-27-74, Sres. Elzaburu to R.I. Seligman.
- 29- 32. Response, 7-4-74, Sres. Elzaburu to L. Etlinger.
- 29- 33. Letter, 9-6-74, R.I. Seligman to Bolet and Terrero.
- 29- 34. Letter, 7-2-74, Bolet and Terrero to Sanders Associates.
- 29- 35. Letter, 9-19-74, R.I. Seligman to J.T. Williams.
- 29- 36. Letter, 5-29-73, R.I. Seligman to T.A. Briody.
- 29- 37. Letter, 12-5-72, R.I. Seligman to T.A. Briody.
- 29- 38. Letter, 5-27-75, R.I. Seligman to A.D. Baarslag.
- 29- 39. Letter, 4-28-75, A.D. Baarslag to L. Etlinger.
- 29- 40. Letter, 1-10-73, R.I. Seligman to Gowling & Henderson.
- 29- 41. Letter, 1-5-73, Gowling & Henderson to L. Etlinger.

- 29- 42. Letter, 6-10-75, R.I. Seligman to Cohen, Zedek & Spisbach.
- 29- 43. Letter, 6-1-75, Dr. E. Rapaport to Sanders Associates.
- 29- 44. Letter, 7-4-74, Dr. E. Rapaport to Sanders Associates.
- 29- 45. Letter, 7-1-74, Office Bletry to Sanders Associates.
- 29- 46. Letter, 7-18-74, Ing. A. Racheli to R.I. Seligman.
- 29- 47. Letter, 12-13-74, L. Etlinger to Ing. A. Racheli.
- 29- 48. Letter, 12-13-74, R.I. Seligman to T.A. Briody.
- 29- 49. Letter, 8-5-74, Barron & Warren to L. Etlinger.
- 29- 50. Letter, 7-4-74, Dipl.-Ing. Klaus Behn to L. Etlinger.
- 29- 51. Letter, 7-12-74, F. de Kemmeter to Sanders Associates.
- 29- 52. Letter, 7-4-74, V.H. Rootsey to Sanders Associates.

INTERROGATORY 1. State whether plaintiff has made or caused to be made any searches or studies as to the validity of:

- (a) U.S. Patent No. 3,659,284;
- (b) U.S. Patent No. 3,659,285;

SUPPLEMENTAL RESPONSE: /

(a)-(b) Sanders has not made or caused to be made any such searches or studies. Magnavox has not made or caused to be made any such searches or studies directed specifically to U.S. Patent Nos. 3,659,284 or 3,659,285 but has had searches conducted directed generally to the subject of video games.

INTERROGATORY 2. If the answer to Interrogatory No. 1(a), (b), (c) or (d) is affirmative, with respect to each:

- (a) identify all documents relating to such searches or studies;
- (b) identify all prior art patents, publications, or treatises, as well as possible or alleged instances or prior knowledge or prior public use mentioned in said searches or studies;

(c) identify the fields of literature searched by specifying the classes and sub-classes of United States and foreign patents searched, by naming the printed publications consulted and their respective dates of publication or date of span examined in the case of periodicals, and by identifying the persons interviewed as purported repositories of the lore of the art and identify also the persons who conducted each segment of the plaintiff's search for prior art.

PPLEMENTAL RESPONSE:2

- 25 - 1. Notes authored by Roger M. Rickert, undated, relating to Sanders' video game patent applications; Thomas A. Briody has custody of the documents; plaintiffs will not produce the documents.
- 25 - 2. Notes of meeting authored by Richard T. Seeger dated September 21, 1971, relating to Sanders' video game patent applications; Thomas A. Briody has custody of the documents; plaintiffs will not produce the documents.
- 25 - 3. Copy of letter dated September 27, 1971, from Richard T. Seeger to Roger M. Rickert relating to Sanders' video game patent applications, Thomas A. Briody has custody of the document; plaintiffs will not produce the document.
- 25 - 4. Memorandum dated September 27, 1971, from R. T. Seeger to George G. Martin relating to Sanders' video game patent applications; Thomas A. Briody has custody of the document; plaintiffs will not produce the document.

25 - 5. Letter dated February 22, 1974, from Thomas A. Briody to Theodore W. Anderson relating to the infringement by defendants and others of the patents in suit and the license negotiations with those infringers; Mr. Anderson has custody of the original document and Mr. Briody has custody of a copy thereof; plaintiffs will not produce the document.

25 - 6. Letter, dated February 28, 1974, from Theodore W. Anderson to Thomas A. Briody replying to document 5; Mr. Briody has custody of the original document and Mr. Anderson has custody of a copy thereof; plaintiffs will not produce the document.

REQUEST 4

4. (a) In PLAINTIFFS' RESPONSE TO DEFENDANT MIDWAY'S REQUEST FOR PRODUCTION of August 7, 1975, plaintiffs specified that they had previously produced copies of certain documents or papers for defendants wherein the portion(s) of each document or paper subject to a claim of attorney-client privilege or attorney's work product was deleted. As to each and every document or paper encompassed by that specification, identify the document or paper by setting out specifically the type of document or paper, date, author, sender and recipient as well as the identity of the person having custody thereof.

RESPONSE: 7

(a) In response to this interrogatory 4, plaintiffs are supplying to defendant copies of each of the documents or papers referred to therein and previously produced for inspection by the defendant Midway Mfg. Co. The copies

being produced include red boxes drawn thereon. The material which was deleted from the documents previously produced because of a claim of attorney-client privilege or attorney's work product appeared within the red boxes. For convenience in responding to this interrogatory, the document copies now being supplied have been consecutively numbered with identification numbers 1-42. The document copies in most cases show on their face the document type, date, author, sender, and recipient. Where a portion of this information is not shown on the document copy, it is stated hereinafter. The original copies of documents 1-17 and 28-42 are in the custody of Thomas A. Briody, Esq., and the original copies of documents 18-27 are in the custody of Louis Etlinger, Esq.

(b) (1) The location of the deletion appears from the copies being produced.

PAUSE (b) (2) & (3)

- 45-No. 1: Recommended course of action
Attorney-client privilege
- 45-No. 2: Proposed course of action
Attorney-client privilege
- 45-No. 3: Opinion as to rights in Mexico ✓
Attorney-client privilege
- 45-No. 4: Request for legal advice
Attorney-client privilege
- 45-No. 5: Request for legal advice on trademarks
Attorney-client privilege
- 45-No. 6: Proposed course of action
Attorney-client privilege

45- No. 7: (Authored by Richard T. Seeger, Esq.,
dated 9-4-70)

Information re: proposed course of action
Attorney-client privilege

45- No. 8: (Handwritten note from Jack Schrey to
Richard T. Seeger, Esq.)

Proposed course of action
Attorney-client privilege

45- No. 9: Comment on application claims
Attorney-client privilege and
attorney's work product

45- No. 10: Comment on application claims
Attorney-client privilege and
attorney's work product

45- No. 11: (Authored by Richard T. Seeger, Esq.)
Notes on proposed license and claims
Attorney-client privilege and
attorney's work product

45- No. 12: (Authored by Richard T. Seeger, Esq.)
Notes on conference and proposed course
of action

Attorney-client privilege and
attorney's work product

45- No. 13: (Handwritten notes authored by
Richard T. Seeger, Esq.)
Comments re: proposed license terms
Attorney-client privilege

- 45- No. 14: (Handwritten notes authored by
R. T. Seeger, Esq.)
Comments re: proposed license terms
Attorney-client privilege
- 45- No. 15: Request for legal advice
Attorney-client privilege
- 45- No. 16: Legal opinion re: filing of foreign
patent applications
Attorney-client privilege and
attorney's work product
- 45- No. 17: Comment on application claims
Attorney-client privilege and
attorney's work product
- 45- No. 18: Comment on application claims
Attorney-client privilege and
attorney's work product
- 45- No. 18: Comment on application claims
Attorney-client privilege and
attorney's work product
- 45- No. 19: Comment on application claims
Attorney-client privilege and
attorney's work product
- 45- No. 20: Opinion on proposed license terms
Attorney-client privilege
- 45- No. 21: (Handwritten notes authored by
L. Etlinger, Esq.)
Opinion on proposed license terms
Attorney-client privilege

- 43- No. 22: (Handwritten notes authored by
L. Etlinger, Esq.)
Opinion on proposed license terms
Attorney-client privilege
- 43- No. 23: Comment on application claims
Attorney-client privilege and
attorney's work product
- 43- No. 24: Legal opinion re: filing of foreign
patent applications
Attorney-client privilege and
attorney's work product
- 43- No. 25: Legal opinion and proposed course of action
Attorney-client privilege and
attorney's work product
- 43- No. 26: Reports opinion of counsel
Attorney-client privilege
- 43- No. 27: Opinion on license negotiations
Attorney-client privilege and
attorney's work product
- 43- No. 28: Opinion on license negotiations
Attorney-client privilege and
attorney's work product
- 43- No. 29: Report of prior meeting
Attorney-client privilege
- 43- No. 30: (Handwritten notes authored by
T. A. Briody, Esq.)
Opinion on proposed license terms
Attorney-client privilege and
attorney's work product
- 43- No. 31: Information re: licensing decision
Attorney-client privilege

- 43- No. 32: (Authored by T. A. Briody, Esq.)
Notes prepared in anticipation of meeting
Attorney-client privilege and
attorney's work product
- 43- No. 33: (Authored by T. A. Briody, Esq.)
Notes re: discussions with counsel and
counsel's opinion
Attorney-client privilege and
attorney's work product
- 43- No. 34: (Authored by T. A. Briody, Esq.)
Notes prepared in anticipation of meeting
and notes re: legal position
Attorney-client privilege and
attorney's work product
- 43- No. 35: (Authored by T. A. Briody, Esq.)
Notes re: proposed license terms,
discussions with counsel, and counsel's
opinion
Attorney-client privilege and
attorney's work product
- 43- No. 36: (Authored by T. A. Briody, Esq.)
Notes re: proposed license terms,
discussions with counsel, and counsel's
opinion
Attorney-client privilege and
attorney's work product
- 43- No. 37: Opinion on license negotiations
Attorney-client privilege and
attorney's work product

- 45- No. 38: Opinion on license negotiations
Attorney-client privilege and
attorney's work product
- 45- No. 39: Notes re: proposed license
Attorney-client privilege and
attorney's work product
- 45- No. 40: Opinion on license negotiations
Attorney-client privilege and
attorney's work product
- 45- No. 41: Opinion on license negotiations
Attorney-client privilege and
attorney's work product
- 45- No. 42: Information received from client
and proposed course of action

Attorney-client privilege
and attorney's work product